

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

+ + + + +

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IN THE MATTER OF: : Case No. 01-28TE
:
PUD MODIFICATION AND TIME :
EXTENSION 200 K STREET, NE :
-----:

Monday,
October 3, 2005

Former Council Chamber
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 01-28TE by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Former Council Chamber at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chair, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairman
GREGORY N. JEFFRIES	Commissioner
JOHN G. PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Acting Secretary
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OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN
JENNIFER STEINGASSER

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes
from the public hearing held on October 3, 2005.

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P-R-O-C-E-E-D-I-N-G-S

6:47 p.m.

CHAIRPERSON MITTEN: Good evening ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Monday, October 3rd, 2005. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners John Parsons and Greg Jeffries.

The subject of this evening's hearing is Zoning Commission Case No. 01-28TE. This is a request by 200 K Street Limited Partnership for approval of a modification to a previously approved Planned United Development and a two-year time extension for property located at 200 K Street, NE, and known as Square 749, Lots 208, 18, 23-26, 31-42, 57, 63, 66, 804, 805, 806-809, 812-815, 818, 819, 820, and 822.

Notice of today's hearing was posted in the D.C. Register on July 1st, 2005, and copies of that notice are on the table by the door.

This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3022, which are the rules of procedure for contested cases.

The order of procedure will be as follows:

We'll take up preliminary matters first followed by the presentation of the Applicant's case,

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1 report by the Office of Planning, report by any other
2 Government agencies, report of the affected Advisory
3 Neighborhood Commission, In this case it's 6-C. And
4 organizations and persons in support and organizations
5 and persons in opposition.

6 The following time constraints will be
7 maintained in this hearing. The Applicant will have
8 60 minutes to present their case, organizations will
9 have five minutes and individuals will have three
10 minutes. The Commission intends to adhere to these
11 time limits as strictly as possible in order to hear
12 the case in a reasonable period of time.

13 The Commission reserves the right to change
14 the time limits for presentations if necessary and
15 notes that no time shall be seeded.

16 All persons appearing before the Commission
17 are to fill out two witness cards and those cards are
18 also on the table by the door. Upon coming forward to
19 speak to the Commission, please give both cards to the
20 reporter who is sitting to our right.

21 Please be advised that this proceeding is
22 being recorded by the Court Reporter. Accordingly, we
23 ask you to refrain from making any disruptive noises
24 in the hearing room. When presenting information to
25 the Commission, first you come forward and then turn

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1 on and speak into the microphone on the table, first
2 stating your name and home address.

3 When you're finished speaking, please turn
4 off the microphones so it's not picking up any
5 background noise.

6 The decision of the Commission in this case
7 must be based exclusively on the public record. To
8 avoid any appearance to the contrary, the Commission
9 requests that person present not engage the members of
10 the Commission in conversation during a recess or at
11 any other time. And Mrs. Schellin will be available
12 throughout the hearing to answer any procedural
13 questions that you might have.

14 Please turn off all beepers and cell phones
15 at this time so as not to disrupt the hearing.

16 At this time, we'll take up any preliminary
17 matters and I know that we have a few, Mrs. Schellin.

18 First, I think we should take up the request
19 for party status. And that request is at Exhibit
20 Number 65 in the record and it's a request by Mosella
21 Boyd Johnson and her submission speaks to why she
22 feels that she's qualified to be granted party status
23 in this case.

24 My feeling about this, while I would
25 encourage her to testify when the time comes, she did

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1 not speak to and I don't know that she could speak to
2 why she is uniquely affected, which is one of the
3 standards for being granted party status. She owns
4 property that's 100 feet from the PUD site and there
5 are numerous property owners that are within that
6 distance. And so I don't know that she could make
7 the case for why she would be uniquely affected and,
8 indeed, she has not made that case.

9 VICE CHAIRMAN HOOD: I would agree, Madam
10 Chair, and I also think that maybe she will have
11 opportunity to testify--

12 CHAIRPERSON MITTEN: Absolutely.

13 VICE CHAIRMAN HOOD: -- and possibly
14 depending how this moves forward, state her position
15 also to the Agency.

16 CHAIRPERSON MITTEN: Anyone else?

17 Is there any objection to denying party
18 status for Ms. Boyd Johnson?

19 Okay. Then without objection, Mosella Boyd
20 Johnson is not granted party status in this case.

21 So, then the next issue before us is a
22 request for postponement from the ANC and there were
23 a couple of different reasons that were put forward by
24 the ANC and those are in their letter to us which is
25 at Exhibit No. 53.

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1 Is Mr. Dixon here or someone representing--
2 would you come forward please?

3 Would you please state your name and home
4 address for the record please?

5 MR. DIXON: My name is Mark Dixon, ANC 602,
6 Chairperson of 6C.

7 CHAIRPERSON MITTEN: Thank you.

8 You said in your letter to us that you
9 needed a couple of weeks into October in order to feel
10 satisfied that you'd had time to convene a meeting and
11 study the materials that the Applicant had put
12 forward?

13 MR. DIXON: Yes. What happened was we had
14 gotten some more information from the developers and
15 everything. More plans and we had not had a chance to
16 read those plans and understand what they're trying to
17 do.

18 Also, the community didn't get a chance to
19 read these plans or seeing anything that's going on
20 too. So, my reason for this is so we can get the
21 community involved if I can get just a little bit more
22 time to get it out to the community, have a community
23 meeting so they can understand and ask developers any
24 questions that they wanted to ask them and get it
25 cleared up before we come to hearing.

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1 CHAIRPERSON MITTEN: Okay. Thank you.

2 Any questions for Mr. Dixon?

3 COMMISSIONER PARSONS: You certainly have
4 had community meetings on this already. It's the
5 changes that you haven't seen.

6 MR. DIXON: It's the changes that they
7 brought to us at the last minute at the last meeting.

8 COMMISSIONER PARSONS: I see.

9 MR. DIXON: Yes. We're not sure about and
10 people in the community weren't sure about.

11 COMMISSIONER PARSONS: Okay. Thank you.

12 MR. DIXON: And we just want to make sure
13 different things can change or cannot change or what.

14 COMMISSIONER PARSONS: Okay.

15 CHAIRPERSON MITTEN: Thank you.

16 COMMISSIONER JEFFRIES: Excuse me.

17 When did the Applicant or the developer let
18 you know of the changes?

19 MR. DIXON: At our last ANC meeting.

20 COMMISSIONER JEFFRIES: Which was?

21 MR. DIXON: September 14th.

22 COMMISSIONER JEFFRIES: 14th. Okay. It's
23 in the letter. Okay. Great. Thank you.

24 CHAIRPERSON MITTEN: Thank you. You can
25 have a seat.

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1 MR. DIXON: Okay.

2 CHAIRPERSON MITTEN: And Mr. Ray, if you
3 would come forward to speak for the Applicant.

4 There's a couple of things that I just want
5 to tee this up for you and then you can respond.

6 One thing is that we know that we were very
7 emphatic with the Applicant about not requesting a
8 further postponement and so for purposes of answering
9 our questions about supporting the request, put that
10 aside and tell us whether or not the Applicant would
11 have any objection to basically accepting the
12 recommendation from the ANC. That's point number one.

13 And then point number two is, and we just
14 had a similar situation that came up last week, where
15 there's a standard for granting an extension in a PUD
16 case. And so far I don't believe we have anything in
17 the record that's to that standard. And it involves.
18 There's a couple of things. One is to show that
19 there's a good cause for the extension and then in our
20 regulations in 2408.11, it expands on what that means.

21 And there's also a requirement to show that
22 there's no substantial change in any of the material
23 facts upon which the Commission based its original
24 approval of the PUD that would undermine the
25 Commission's justification for approving the original

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1 PUD. And so given that there's not material on the
2 record at this point addressing those, and that's a
3 threshold question for the Commission, it might be
4 worthwhile to take some additional time to fill out
5 the record.

6 MR. RAY: Thank you. Madam Chairman, for
7 the record my name is John Ray. I'm with the law firm
8 of Manatt Phelps & Phillips and I represent the
9 Applicant.

10 Madam Chairman, we oppose the delay and we
11 appear tonight and urge the Commission to go forward
12 with this application.

13 We appeared before the ANC on two occasions.
14 We first went before the ANC and presented to them
15 that we were going to withdraw our desire to have this
16 as both residential and office and simply make it all
17 residential with ground retail.

18 They requested that we go to the Zoning
19 subcommittee and present it there. We went before the
20 Zoning Committee and presented it at the Zoning
21 Committee and then went back to the full ANC.

22 The real change in this, Madam Chairman,
23 we're not asking for any changes in terms of the
24 heights that's been approved before. We're not
25 changing the footprint. All that we are really

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1 changing is that we're withdrawing the office building
2 part and making it all residential.

3 There's really no substantial change to this
4 project.

5 CHAIRPERSON MITTEN: Okay. Does anyone have
6 any questions for Mr. Ray? His position?

7 VICE CHAIRMAN HOOD: Mr. Ray, you said you
8 are opposed to the postponement. But when you met with
9 the Zoning. I guess the ANC has a zoning license
10 separate. Okay.

11 When you met with them, what was the--
12 because I think they're also in agreement with the
13 continuance, am I correct? At least that's the way I
14 read it.

15 MR. RAY: You mean the Zoning?

16 VICE CHAIRMAN HOOD: Yes. Whether it's the
17 zoning piece or the ANC and the full ANC, all them are
18 in accord as far as postponement. Am I correct?

19 MR. RAY: Well, the Zoning Committee
20 actually, Mr. Hood, voted in support of the project.
21 It was at the full ANC that the resolution was passed,
22 I assume for an extension.

23 VICE CHAIRMAN HOOD: For us, for our
24 benefit, that's why I added the full ANC.

25 MR. RAY: I understand.

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1 VICE CHAIRMAN HOOD: So, I'm just trying to
2 understand because I didn't understand actually when
3 I was reading the letter either. But I was just
4 trying to see whether they both on one accord.

5 Do you know whether they both on one accord
6 for this postponement?

7 MR. RAY: Well, I can only say that at the
8 Zoning Committee they voted in favor and in support of
9 the project.

10 It was at the full ANC that the resolution
11 was passed, the request for extension. So, I departed
12 the Zoning Committee with the understanding that they
13 was in support of the project.

14 VICE CHAIRMAN HOOD: Okay. Thank you.

15 MR. RAY: They did not ask for any kind of
16 an extension at that committee.

17 COMMISSIONER PARSONS: Mr. Ray, apparently
18 something must have happened at the ANC where new
19 plans were brought forward between the Zoning
20 Committee and the ANC. Is that correct?

21 MR. RAY: No. Mr. Parsons. I think what
22 happened at the ANC meeting that there were an number
23 of residents that showed up who stated opposition to
24 the project and who indicated that they had not had an
25 opportunity to review the new proposal. And I think

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1 also they indicated that they were not present at the
2 Zoning proceeding.

3 But we presented the same plans at both.

4 CHAIRPERSON MITTEN: Mr. Dixon, maybe you
5 should come back up and if you can, help to clarify
6 this at all.

7 MR. DIXON: Understanding that the Zoning
8 Committee is one our committees that people go through
9 before they come before the whole ANC. The residents
10 who came to our meeting at the whole ANC did complain
11 about they didn't know anything of what was going on
12 in reference to the height of the property and some
13 other questions about the property itself and the
14 homes that are still occupied on the property that
15 they're working on, that they are planning on
16 rebuilding on.

17 I had the minutes of both meetings if you
18 need to request it. Yes. When it came through --when
19 it came through the committee for zoning in my area,
20 it might have passed that area. Zoning meetings is
21 okay as far as they know to send it to the whole ANC.
22 The whole ANC votes on the whole project.

23 Yes. We do have a number of commissioners
24 on the Zoning Committee and after listening to what
25 the community said and after we got to look at the

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1 plans and everything, we thought that we didn't have
2 enough time to observe what is really going on and
3 that's what happened.

4 CHAIRPERSON MITTEN: Okay. Anyone else have
5 questions?

6 COMMISSIONER JEFFRIES: So, what was the
7 date of the Zoning Committee of the ANC?

8 MR. DIXON: September the 1st. What's the
9 date of that meeting? 7th. Seven days before the--we
10 have the first Wednesday of each month the Zoning
11 Committee. The second Wednesday of the same month we
12 had the ANC.

13 COMMISSIONER JEFFRIES: So, the Zoning
14 Committee approved what was put in front of them at
15 that time?

16 MR. DIXON: At that time.

17 COMMISSIONER JEFFRIES: Okay. And then what
18 does that Zoning Committee do with that information as
19 it related to the overall community? Or it just
20 presents it to the full ANC?

21 MR. DIXON: We call on the Zoning Committee.
22 They make their presentation and at that time, the
23 whole Commission votes on it.

24 COMMISSIONER JEFFRIES: So, they made that
25 presentation on September 14th?

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1 MR. DIXON: Right.

2 COMMISSIONER JEFFRIES: And then the full
3 ANC turned it down?

4 MR. DIXON: Right.

5 COMMISSIONER JEFFRIES: And what the
6 Applicant is saying is that the only change really was
7 a change from office complex to residential?

8 MR. RAY: No. Commissioner. There was no
9 change between the zoning meeting and the full ANC.

10 COMMISSIONER JEFFRIES: Oh, okay.

11 MR. RAY: The change that I'm speaking of is
12 the change that we made--

13 COMMISSIONER JEFFRIES: Before. Prior to--

14 MR. RAY: Prior. Yes.

15 COMMISSIONER JEFFRIES: Okay. So, we're
16 looking at the same project from September 1st to the
17 14th?

18 MR. RAY: Yes. September 7th to the 14th.

19 COMMISSIONER JEFFRIES: Oh, the 7th to the
20 14th?

21 MR. DIXON: Right. And what had happened
22 was, we didn't know, in changing over from business,
23 business to residence, I guess the confusion came up
24 as how many houses is that? How this? How many that
25 came up?

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1 COMMISSIONER JEFFRIES: Okay, and so--

2 MR. RAY: And that came from the first time
3 that I think you came through us was in the summer,
4 back in July. Was that correct?

5 MR. DIXON: I'm not sure about that right
6 now. I'm trying to go the top of my head.

7 COMMISSIONER JEFFRIES: So, Commissioner, so
8 what's happened since September 14th and today as it
9 relates to ANC and this project?

10 MR. DIXON: Well, we have been to the
11 community and setting up some meeting dates, if it
12 goes through. And we will have some community
13 meetings. We have community here tonight to see if
14 it's going to happen. And have the developers come to
15 talk to the people at the community meeting.

16 COMMISSIONER JEFFRIES: Thank you.

17 COMMISSIONER PARSONS: Now, Mr. Ray, we've
18 been presented with some plans very recently that join
19 two buildings together. Are you familiar with those?

20 MR. RAY: Yes, sir.

21 COMMISSIONER PARSONS: Is that something the
22 ANC has seen? Or the Zoning Committee saw?

23 MR. RAY: No. They did not.

24 COMMISSIONER PARSONS: Okay. So, that
25 wasn't something that happened between the Zoning and

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1 the ANC?

2 MR. RAY: Yes.

3 COMMISSIONER PARSONS: Thank you.

4 VICE CHAIRMAN HOOD: Madam Chair, if I could
5 just ask one more question?

6 CHAIRPERSON MITTEN: Yes.

7 CHAIRPERSON MITTEN: On that square, there's
8 some privately owned homes. And I just want to make
9 sure we're not be acquiring homes.

10 Are we doing the imminent domain piece. Is
11 that going to be something--I didn't read it. So, I
12 just want to make sure that's not going to be a--okay.
13 Good. Thank you.

14 CHAIRPERSON MITTEN: It's private. They
15 don't have the --

16 VICE CHAIRMAN HOOD: Right. Well, when I
17 heard the homes, you know, we've been through that
18 once before--

19 CHAIRPERSON MITTEN: Right.

20 VICE CHAIRMAN HOOD: -- and I got caught off
21 guard.

22 CHAIRPERSON MITTEN: Right. Okay. Thank
23 you.

24 You can return to your seats. Thank you.

25 Well, what I would like to recommend is, I

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1 think, Mr. Ray was attempting to address the concern
2 I raised about the standard for PUD extension by
3 speaking to the substantial change. But it's a
4 substantial change in the material facts upon which
5 the Commission based its original approval.

6 And also that there's good cause for the
7 extension, which is it's a fairly high standard and
8 one that has not been fully developed to my mind. I
9 think Mr. Parsons raises a good point which is there
10 are new plans the community has not seen yet and I
11 would like to recommend that we do postpone the
12 hearing tonight until the next available date to give
13 the Applicant time to meet their burden under 2408.10
14 and 2408.11. And allow the community time to, you
15 know, fully examine the proposal where it stands today
16 and I'd like to get some feedback.

17 COMMISSIONER PARSONS: Was that a motion?
18 I'll second it if it was.

19 CHAIRPERSON MITTEN: Okay. Fine. Fine.

20 COMMISSIONER PARSONS: Thank you.

21 CHAIRPERSON MITTEN: Discussion?

22 VICE CHAIRMAN HOOD: Yes. Discussion, Madam
23 Chair. I just want to make sure we all on the same.

24 The Applicant is going to come back and
25 speak to this standard for PUD extensions first?

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1 CHAIRPERSON MITTEN: Yes.

2 VICE CHAIRMAN HOOD: And we want to deal
3 with that first. And then secondly, if that's
4 extended, then we'll move into the PUD?

5 CHAIRPERSON MITTEN: Yes. And I think what
6 we should do in case then, what we would do in the
7 case that we heard last Thursday is, basically have a
8 two-phase hearing. And the first phase of the hearing
9 will be to take up the matter of the extension and
10 people can give us testimony on the extension and
11 we'll vote the extension up or down. And if the
12 extension is granted, then we move forward with the
13 hearing on the modification.

14 If the extension is not granted, then the
15 hearing is over because you have to extend the PUD in
16 order to modify the PUD.

17 And, you know, the Commission has been
18 criticized for allowing PUDs that have been around for
19 quite some time to continue to be extended and then
20 become the basis for modifications. And that's why I
21 think it's very important that we highlight the
22 importance of meeting your burden for the extension
23 and that we call this out separately in the hearing.

24

25 VICE CHAIRMAN HOOD: Madam Chair, we are

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1 also looking at today. We want to make sure, I think,
2 when the Chairman came forward from the ANC, Mr.
3 Davis, I believe--

4 CHAIRPERSON MITTEN: Dixon.

5 VICE CHAIRMAN HOOD: Dixon, I'm sorry.
6 That's what happens when you go off the top of your
7 head.

8 Mr. Dixon had mentioned that they were going
9 to have a series of meetings.

10 CHAIRPERSON MITTEN: Yes.

11 VICE CHAIRMAN HOOD: We need to make it
12 clear that they probably need to move faster and maybe
13 have "a" meeting and make sure everybody understands.
14 But also we want to make sure that whatever date we
15 choose is in tune with the date so we can get
16 everybody together.

17 CHAIRPERSON MITTEN: Okay. With that in
18 mind, Mrs. Schellin, what do you have by way of a
19 date?

20 MRS. SCHELLIN: Yes. My first available
21 would be November 17th.

22 CHAIRPERSON MITTEN: Is the Applicant
23 available on the 17th of November?

24 I need you to answer on the record, sir.
25 Sorry.

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1 And, Mr. Dixon, maybe you could come forward
2 and tell us if the 17th would work for the ANC also?

3 Just give me that on the record.

4 Go ahead, Mr. Dixon, since you have the
5 shorter answer, I think.

6 MR. DIXON: Okay. The 17th will be enough
7 time because by that time we will have another ANC
8 meeting and everything.

9 CHAIRPERSON MITTEN: Okay.

10 MR. DIXON: And we will meet by the
11 community and we're setting it up as we talk now.

12 CHAIRPERSON MITTEN: Okay. Thank you.

13 Mr. Ray.

14 MR. RAY: Madam Chairman, I'm pretty sure
15 I'm available. I know that I have a deposition in
16 November. I think it's November the 14th. But I will
17 check as soon as I can get back and let you know.

18 CHAIRPERSON MITTEN: Okay. Well, we'll plan
19 on the 17th unless we hear otherwise and then we'll
20 just have to figure something else out.

21 But I do want to emphasize the importance of
22 meeting the burden for the PUD extension. So, please
23 review that part of the regulation. I just want to
24 give you every opportunity to meet the standard.

25 Okay. Anything else? Okay.

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1 So, we have a motion then before us that we
2 would postpone this hearing until November 17th.

3 VICE CHAIRMAN HOOD: I think there's been a
4 motion to second.

5 CHAIRPERSON MITTEN: Thank you. My brain is
6 just moving just a tad slow at the moment.

7 So, all those in favor please say aye.

8 (AYES)

9 CHAIRPERSON MITTEN: None opposed, Mrs.
10 Schellin.

11 MRS. SCHELLIN: Yes. The staff would record
12 the vote, four to zero to one to postpone Case No. 01-
13 28 to Thursday, November 17th at 6:30 p.m.
14 Commissioner Mitten moving, Commissioner parsons
15 seconding, Commissioners Hood and Jeffries in favor.
16 And Commissioner Hildebrand not present, not voting.

17 CHAIRPERSON MITTEN: Thank you.

18 And I'm grateful to everyone who came out
19 tonight and has taken an interest in this case. And
20 hopefully this will give you a further opportunity to
21 speak to the Applicant and share whatever concerns you
22 might have.

23 So, we look forward to seeing you again on
24 November 17th.

25 We're adjourned.

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1 (Whereupon, the above matter was concluded
2 at 7:10 p.m.)
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